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In re Application of :
Shinohara et al :
Serial No. 08/169,127 : DECISION ON PETITION
Filed: December 20, 1993 :
Attorney Docket No. 0756-945 :

This is a decision on the petition filed February 2, 1994 and the supplemental petition filed March 17, 1994, requesting that the above-identified application be accorded a filing date of December 20, 1993.

On December 20, 1993, the application was deposited.

On January 12, 1994, Application Division mailed a Notice stating that drawings of Figures 3C and 3D described in the specification were required in compliance with 35 USC 111 and that the filing date of the application would be the date of receipt of the drawings. An oath or declaration and the application filing fee were also required.

In response, on February 2, 1994, inter alia, the present petition and the petition fee were filed.

On March 17, 1994, inter alia, the present supplemental petition, a preliminary amendment and a declaration and surcharge were filed.

Petitioners argue that all the figures for this application were present on filing. Further, it is argued that the specification included a reference to drawings of Figures 3(A)-3(D), wherein the references to drawings of Figures 3(C) and 3(D) were the result of inadvertent errors. In support of the petition, the preliminary amendment to the specification conforms the drawing figures mentioned in the specification with those labeled in the drawings, as filed. Petitioners request that the application be accorded a filing date of December 20, 1993, and the petition fee be refunded.

MPEP 608.01(f) states, in part, that an application is considered incomplete if it omits drawings which are described in the specification.

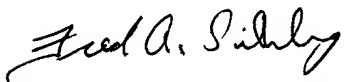
A review of the record reveals that since the application, as filed, referred to Figures 3(A)-3(D), the application was prima facie incomplete in the absence of Figures 3(C) and 3(D). However, it appears that applicants erroneously referred to Figures 3(C) and 3(D) in the brief description of the drawings when, in fact, the drawings contained no Figures 3(C) and 3(D). The evidence is convincing that the references to Figures 3(C) and 3(D) in the specification were inadvertent errors which have been corrected by the preliminary amendment.

Since it has been determined that all the drawing figures for this application were present on filing, even though the specification contained inadvertent errors, on petition, the application may be accorded the requested filing date. The petition fee will not be refunded since the present petition and petition fee were necessary in view of applicants' filing error.

The petition is granted.

The preliminary amendment to the specification filed March 17, 1994, will be entered in due course and must be considered by the examiner for entry of new matter not described in the application as filed. 35 USC 112, first paragraph; 35 USC 132.

The application is being returned to Application Division for further processing with a filing date of December 20, 1993, using the application papers filed December 20, 1993 and the declaration filed March 17, 1994, and an indication on the file wrapper that nine (9) sheets of drawings were present on filing.



Fred A. Silverberg
Special Program Examiner
Office of the A/C for Patents

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